

Message Text

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ACTION EA-06

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TO SECSTATE WASHDC 4046

S E C R E T SECTION 1 OF 2 MANILA 13105

LIMDIS

E.O. 11652: GDS

TAGS: SHUM, PINT, RP

SUBJECT: TRINIDAD HERRERA CASE: THE COURT-MARTIAL OF HER ALLEGED
TORTURERS

REF: MANILA 12868

1. SUMMARY: OUR ANALYSIS OF THE RECENTLY CONCLUDED COURT-MARTIAL OF THE ALLEGED TORTURERS OF TRINIDAD HERRERA (THEY WERE ACQUITTED) SHOWS THAT THE MILITARY INVESTIGATION OF THE CHARGES WAS LESS THAN THOROUGH AND THE COURT-MARTIAL PROCEEDINGS WERE BIASED IN FAVOR OF THE DEFENDANTS. WE CONCLUDE THAT THE GOP DID NOT EXTEND ITSELF TO SEE JUSTICE DONE IN THIS CASE. END SUMMARY.

2. IN LIGHT OF THE RECENT ACQUITTAL OF ACCUSED TORTURERS OF MRS. TRINIDAD HERRERA (REFTEL), IT WOULD BE USEFUL TO REVIEW AND ANALYZE WHAT HAS TRANSPIRED SINCE WE FIRST LEARNED OF THIS CASE OVER THREE MONTHS AGO. ON MAY 11 THE CHARGE EXPRESSED TO PRESIDENT MARCOS OUR CONCERN OVER ALLEGATIONS OF MRS. HERRERA'S TORTURE. THE FOLLOWING DAY ARRANGEMENTS WERE MADE BY THE GOP FOR TWO EMBOFFS TO SEE MRS. HERRERA FOR ALMOST TWO HOURS. THEIR DISCUSSIONS WITH HER, AS WELL

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AS HER PHYSICAL APPEARANCE, INCLINED EMBOFFS TO BELIEVE MRS. HERRERA WAS IN FACT TORTURED AS CLAIMED. PRESIDENT MARCOS SUBSEQUENTLY ORDERED MRS. HERRERA'S RELEASE FROM CUSTODY (ON MAY 13), SIMULTANEOUSLY ANNOUNCING THE COURT-MARTIAL OF LT. EDUARDO MATILLANO AND COMPLETE INVESTIGATION OF MRS. HERRERA'S TORTURE ALLEGATIONS. ON MAY 13, MRS. HERRERA WAS FORMALLY CHARGED WITH BELONGING TO A COMMUNIST

FRONT ORGANIZATION, PARTICIPATING IN UNAUTHORIZED MASS ACTIONS, AND USING AN ALIAS TO AVOID ARREST. COURT-MARTIAL PROCEEDINGS AGAINST MATILLANO AND A SECOND DEFENDANT, LT. PRUDENCIO REGIS, JR., BEGAN JUNE 29. MRS. HERRERA'S CIVILIAN LAWYER, FORMER SENATOR FRANCISCO RODRIGO, WAS INFORMED AT SAME TIME THAT THE CHARGES PENDING AGAINST HER WOULD BE HELD IN ABEYANCE UNTIL AFTER COURT-MARTIAL PROCEEDINGS HAD BEEN COMPLETED. ON AUGUST 17 MILITARY TRIBUNAL FOUND BOTH MATILLANO AND REGIS NOT GUILTY.

3. WAS INVESTIGATION OF TORTURE ALLEGATION THROOUGH?
ON MAY 12, PRESIDENT MARCOS ORDERED PC CHIEF FIDEL RAMOS TO CONDUCT A THOROUGH INVESTIGATION OF MRS. HERRERA'S ALLEGATION THAT SHE WAS TORTURED. RAMOS DESIGNATED BG PEDRO ZAFRA TO SUPERVISE INVESTIGATION. ZAFRA ORDERED A LINE-UP MAY 17 AT WHICH MRS. HERRERA PICKED OUT MATILLANO FROM A GROUP OF AT LEAST TEN YOUNG OFFICERS AS ONE OF TWO MEN WHO TORTURED HER. HOWEVER, THE MILITARY NEVER PRODUCED THE SECOND MAN WHO MRS. HERRERA CONSISTENTLY CLAIMS PARTICIPATED IN TORTURE OR THIRD MAN WHO SHE SAYS ALSO PRESENT DURING TORTURE. ON THE OTHER HAND, TWO MEN INVOLVED IN INITIAL QUESTIONING BUT NOT IN TORTURE WERE EVENTUALLY PRODUCED. AT THE MAY 18 PRELIMINARY HEARING ON CHARGES AGAINST MRS. HERRERA, AN AFFIDAVIT WAS PRESENTED SIGNED BY FOUR OFFICERS, INCLUDING LT. REGIS, WHO HAD PARTICIPATED IN MRS. HERRERA'S POST-ARREST
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PROCESSING. REGIS ATTENDED THIS HEARING AND MRS. HERRERA READILY IDENTIFIED HIM AS ONE OF THE FIVE MEN WHO INTERROGATED HER. BUT ACCORDING TO MRS. HERRERA, REGIS LEFT INTERROGATION ROOM BEFORE TORTURE BEGAN; HIS ONLY MIDCONDUCT WAS TO THROW A CRUMPLED CIGARETTE PACK AT HER. RODRIGO REQUESTED REGIS BE CHARGED WITH CONDUCT UNBECOMING AN OFFICER FOR THIS ACT. TO HIS SURPRISE, THE MILITARY COMPLIED AND MANILA PRESS ACCOUNTS GAVE IMPRESSION THAT BOTH REGIS AND MATILLANO WERE ACCUSED OF TORTURING MRS. MERRERA. THIS SEEMS ESPECIALLY ODD SINCE REGIS'S FATHER IS BRIGADIER GENERAL IN PHILIPPINE ARMY. ONE POSSIBLE EXPLANATION FOR THIS DEVELOPMENT IS THAT THE MILITARY FELT PRESSURE TO PRODUCE A SECOND DEFENDENT AND THREW IN REGIS BECAUSE THEY KNEW TRIBUNAL WOULD NEVER CONVICT HIM.

4. RODRIGO PERSISTENTLY REQUESTED ANOTHER LINE-UP IN WHICH MATILLANO'S TWO ALLEGED COMPANIONS IN TORTURE (ONE PERPETRATOR AND ONE WITNESS) WOULD BE PRESENT. HE SUGGESTED TO ZAFRA THAT THE THREE OTHER OFFICERS WHO SIGNED AFFIDAVIT WITH REGIS BE INCLUDED IN LINE-UP. A SECOND LINE-UP WAS HELD MAY 21, BUT ONLY

ONE OF THESE THREE WAS PRESENT (CONSTABLE PATERNO ORDUNO, WHO MRS. HERRERA SAYS ALSO LEFT INTERROGATION ROOM BEFORE TORTURE BEGAN). RODRIGO REQUESTED THIRD LINE-UP, BUT ZAFRA STONEWALLED. RODRIGO ARGUES CONVINCINGLY THAT IT WOULD BE AN EASY MATTER TO PRODUCE THE OTHER TWO MEN WHO SUPPOSEDLY REMAINED BEHIND IN THE ROOM WITH MATILLANO, BUT THIS WAS NEVER DONE. (NOTE: DURING COURT-MARTIAL, DEFENSE CHOSE NOT TO CALL MATILLANO OR REGIS TO WITNESS STAND, THEREBY DEPRIVING PROSECUTION OPPORTUNITY TO QUESTION THEM.) WE MUST THEREFORE CONCLUDE THAT THE MILITARY'S INVESTIGATION, ALTHOUGH PRESSED TO CONCLUSION WITH REASONABLE SPEED, WAS LESS THAN THOROUGH.

5. WAS THE COURT MARTIAL FAIR? ATTORNEY RODRIGO ARGUES
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THAT THE DECK WAS STACKED IN FAVOR OF THE DEFENDENTS. WE ARE INCLINED TO AGREE WITH HIM. UNDER COURT-MARTIAL PROCEEDINGS A DEFENDANT CAN REQUEST CIVILIAN LAWYER, WHEREAS PROSECUTION RESTS ONLY IN HANDS OF MILITARY LAWYER APPOINTED BY COURT FROM JUDGE ADVOCATE GENERAL SERVICE. MATILLANO AND REGIS WERE DEFENDED BY ANTONIO CORONOL, A PEDANTIC BUT ALERT AND COMPETENT CIVILIAN ATTORNEY. ALL OBSERVERS AGREE CORONEL HOPELESSLY OUTCLASSSED CAPTAIN

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S E C R E T SECTION 2 OF 2 MANILA 13105

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MARTIN RASALAN, THE YOUNG MILITARY PROSECUTOR APPOINTED

BY THE GOVERNMENT WHOM FORMER SENATOR SALONGA DESCRIBED TO US AS "THE LOUSIEST LAWYER IN THE ARMY." RASALAN'S PERFORMANCE WAS CONSIDERABLY LESS THAN OUTSTANDING. HE TOOK LITTLE INITIATIVE TO ELICIT TESTIMONY, FILE MOTIONS, OR CROSS-EXAMINE DEFENSE WITNESSES UNLESS PROMPTED BY NOTES FROM RODRIGO. HE HAD DIFFICULTY ELICITING COHERENT TESTIMONY FROM FRIENDLY WITNESSES. HE RARELY OBJECTED TO THE AGGRESSIVE TACTICS OF DEFENSE COUNSEL, EVEN WHEN MRS. HERRERA BECAME DISTRAUGHT AND BROKE INTO TEARS DURING CROSS-EXAMINATION. THE COURT ALSO MADE A PARTICULARLY CONTROVERSIAL DECISION NOT TO ALLOW PROSECUTION, AS MEANS OF SHOWING PATTERN OF BEHAVIOR, TO CALL AS WITNESSES THREE DETAINEES, REBILLA, TAN, AND KITCHING, TO TESTIFY THEY WERE ALSO TORTURED BY MATILLANO. THE LAW MEMBER OF THE MILITARY TRIBUNAL, CAPTAIN DAVID ALFECHE, RULED THAT ONE OF THE THREE, KITCHING COULD TESTIFY. HOWEVER, AFTER A CLOSED SESSION, THE TRIBUNAL REVERSED ALFECHE AND DECIDED NOT TO ALLOW KITCHING'S TESTIMONY. RODRIGO ARGUES CONVINCINGLY THAT, PROCEDURALLY, THE RULING OF LAW MEMBER ON LEGAL QUESTIONS IS FINAL AND NOT SUBJECT TO APPEAL TO THE TRIBUNAL AS A WHOLE. SURPRISINGLY, MILITARY PROSECUTOR RASALAN, IN A SUBSEQUENT LETTER TO RODRIGO, CALLED THIS RULING OF THE COURT "ERRONEOUS."

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6. WAS THE TRIBUNAL'S VERDICT REASONABLE? GIVEN SCANTY AND LARGELY CIRCUMSTANTIAL EVIDENCE PRESENTED BY PROSECUTION, THE MILITARY TRIBUNAL'S DECISION WAS PROBABLY REASONABLE. THE ONLY PHYSICAL EVIDENCE PRESENTED BY PROSECUTION WAS SCARS ON MRS. HERRERA'S THUMBS ALLEGEDLY MADE BY ELECTRICAL WIRE DURING SHOCK TREATMENT. THE DEFENSE ARGUED WITH EFFECT THAT THE TINY SCARS COULD HAVE BEEN CAUSED BY OTHER THINGS. IT CAN CERTAINLY BE ARGUED THAT THERE IS AT LEAST REASONABLE DOUBT THAT MRS. HERRERA'S CONDITIONS WAS BROUGHT ON BY TORTURE. THE DEFENSE QUESTIONED HER MOTIVES, ARGUING THAT SHE CONCOCTED TORTURE STORY TO GAIN PUBLICITY AND RELEASE FROM DETENTION. MRS. HERRERA WAS ON WITNESS STAND FOR TOTAL OF ALMOST 18 HOURS. DURING GRUELING CROSS-EXAMINATION, BY DEFENSE COUNSEL, HER TESTIMONY WAS AT TIMES CONFUSED, ALTHOUGH THE DEFENSE NEVER SUCCEEDED IN SHAKING BASIS ELEMENTS OF HER STORY. SINCE NO EYEWITNESSES TESTIFIED THEY SAW MRS. HERRERA TORTURED, VERDICT CAME DOWN TO WORD OF MRS. HERRERA AGAINST MATILLANO AND REGIS. THE COURT CHOSE TO BELIEVE DEFENDENTS.

7. COMMENT: WE ARE DISAPPOINTED IN THE MILITARY'S HANDLING OF THE INVESTIGATION (THEIR FAILURE TO PRODUCE TWO INDIVIDUALS WHO ALLEGEDLY PARTICIPATED IN OR WERE PRESENT DURING THE ALLEGED TORTURE). WE ARE ALSO DISAPPOINTED

IN THE MILITARY TRIBUNAL'S HANDLING OF THE COURT-MARTIAL
(THE ASSIGNMENT OF AN INCOMPETENT PROSECUTOR; THE REFUSAL
TO PERMIT THE PROSECUTION TO CALL CERTAIN WITNESSES). THE
CONCLUSION IS INESCAPABLE THAT THE PHILIPPINE ESTABLISH-
MENT DID NOT EXTEND ITSELF TO SEE JUSTICE DONE IN THIS
CASE. OF COURSE EVEN HAD THE PROSECUTION BEEN ABLE TO
PRESENT A STRONGER CASE, IT IS QUITE POSSIBLE THAT THE
EVIDENCE PRESENTED WOULD STILL HAVE LEFT A REASONABLE
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DOUBT THAT TORTURE HAD OCCURRED AND, IN THE FACE OF
CONFLICTING TESTIMONY BY THE PLAINTIFF AND THE DEFENDANTS,
A VERDICT OF NOT GUILTY STILL WOULD HAVE BEEN RENDERED.
NONETHELESS, MRS. HERRERA AND THE PROSECUTION SHOULD AT
LEAST HAVE BEEN PERMITTED TO MAKE A BETTER SHOW OF IT.
RHETORIC TO THE CONTRARY, THE GOP'S MANAGEMENT OF THIS
MATTER WILL NOT CONVINCE ITS DOMESTIC AND INTERNATIONAL
CRITICS.
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